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FEB 17 2010

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CHARLES H. MONTANGE

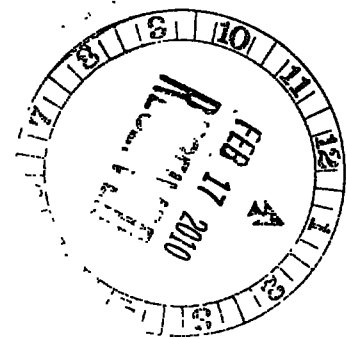
ATTORNEY AT LAW

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16 February 2010



Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: Montoff Transportation Company LLC - Acq.
Exemption - BNSF Railway Company,
F.D. 35354

Dear Ms. Brown:

226443

Enclosed for filing please find the original and ten copies of a notice of exemption in the above-captioned proceeding. Also please find a check for the \$1800 filing fee.

Thank you for your assistance in this matter.

FILED

FEB 17 2010

**SURFACE
TRANSPORTATION BOARD**

Very truly,

Charles H. Montange
for Montoff Transportation
Company, LLC

Encls.

cc. Counsel for BNSF & ODOT (w/encls)

FEE RECEIVED

FEB 17 2010

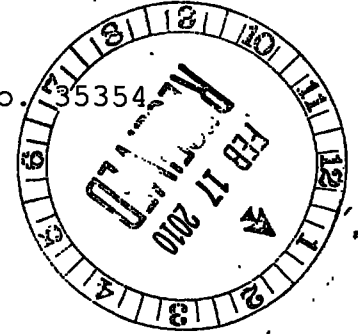
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE SURFACE TRANSPORTATION BOARD

Montoff Transportation Company, LLC -)
Acquisition Exemption -)
BNSF Railway Co.)

F.D. No. 35354

Notice of Exemption
for Acquisition
(of Reactivation Rights)
per 49 C.F.R. 1150.31



Montoff Transportation Company, LLC ("Montoff"), is seeking to acquire all rights in MP 74.60 (near Fairmont) to MP 116.40 (at Guthrie) in Logan and Guthrie Counties, OK, to enable it to arrange rehabilitation funding for restoration of rail use of the aforementioned line, and to restore rail use of the line.

To this end, Montoff is taking two regulatory initiatives: first, Montoff has sought authority to acquire the interests of Oklahoma Department of Transportation ("ODOT") through the filing of a motion to substitute Montoff as interim trail manager in The Burlington Northern and Santa Fe Railway Company - Abandonment Exemption - in Garfield and Logan Counties, AB 6 (Sub-no. 379X).¹

Second, as manifest in this Notice, Montoff seeks to acquire the residual common carrier obligations of BNSF (right to

¹ Montoff and ODOT filed a joint petition for substitution of trail manager in AB 6 (Sub-no. 379X) docket on August 31, 2009. BNSF initially objected, expressing concern over certain retained rights, which resulted in responsive filings by ODOT and Montoff. On October 14, 2009, Montoff requested that the joint petition be held in abeyance pending discussions with BNSF. Montoff indicated that Montoff and BNSF had reached an agreement in principle, which had to be reduced to writing, and that the agreement in principle also anticipated the filing of an additional proceeding relating to the property. Completion of a written agreement took somewhat longer than anticipated. This docket (F.D. 35354) is the additional proceeding forecast in the October 14 filing.

reactivate service) for the same rail line. In past proceedings, this Board has allowed the transfer of reactivation rights (sometimes referred to as "residual common carrier obligation") pursuant either to notices or petitions for exemption.² In order to foster the restoration of rail use of this line, Montoff, with the consent and support of BNSF and ODOT as further

² In Georgia Southwestern Railroad - Sale and Lease Exemption - South Carolina Central Railroad, F.D. 34144, served Jan. 18, 2002, GSWR was authorized to acquire operating rights (right to reactivate) on a 13.42 railbanked line pursuant to a notice of exemption under 49 C.F.R. 1180.2(d)(3). In BG & CM Railroad - Acquisition and Operation Exemption - Camas Prairie Railnet, Inc., F.D. 34298, served Oct. 6, 2003, BG&CM acquired by exemption the right to operate over 66.8 miles of line which it had railbanked. BG & CM also moved to dismiss this exemption on the ground that it already held the right to reactivate as the railbanking party. BG&CM also applied for an exemption from most common carrier regulation under Subtitle IV for operation of the line. STB ruled that the right to reactivate does not transfer without the Board's approval, but granted BG & CM's petition for an exemption from most Subtitle IV regulation of the line in BG & CM Railroad, Exemption from 49 U.S.C. Subtitle IV, F.D. 34399, served Oct. 17, 1993. In light of STB's granting of the exemption from most Subtitle IV regulation, the Board dismissed the authority granted in F.D. 34298 as unnecessary. In City of Coeur d'Alene - Acquisition and Operation Exemption - Union Pacific Railroad Company, F.D. 34980, served March 30, 2007, STB declined to authorize transfer of the right to reactivate to the City on the ground that the City is not a rail carrier and had not shown it was able or willing to provide rail service, or why it wished to obtain the right to reactivate, or that the previous carrier (UP) was unwilling or unable "to reassert control or restore service on the line in the future." In King County - Acquisition Exemption - BNSF Railway Company, F.D. 35148, served Sept. 18, 2009, the Board authorized King County to acquire the right to reactivate where BNSF made clear it wished to retain no such rights. Montoff, BNSF and ODOT do not construe that case, particularly in light of other cases, as stating that such transfer of such rights may only be by petition for exemption provided information is provided to assure the Board that the abandoning railroad (here BNSF) does not wish to retain reactivation rights and there is a reason for the transfer of such rights at this time.

explained below, respectfully requests that the Board authorize the transfer of the referenced residual common carrier (reactivation rights) pursuant to this Notice.

Background

Montoff is acquiring ODOT's interests with an intent to operate the property for rail purposes. Montoff initially intends to develop car storage opportunities on appropriate portions of the line, and then to restore service when track and bridge rehabilitation (especially from the Cimarron River south) are completed. In order to obtain the necessary financing to complete this work, Montoff's bankers have advised that Montoff first should acquire the residual common carrier obligation so that the investment in rehabilitation is more secured. To this end and as further explained below, Montoff must obtain not only ODOT's interests in the rail properties, but also BNSF's residual common carrier obligation relating to those properties (right to reactivate).

Montoff has entered into an agreement with the ODOT to acquire all the interests of ODOT in the rail corridor from Guthrie to Fairmont (at issue in AB 6 (Sub-no. 379X)). After substantial delays for due diligence and related activities, ODOT and Montoff are seeking to close this transaction by March 25, 2010.

Montoff has also entered into an Agreement with BNSF for Montoff to acquire the operating (residual common carrier, or

reactivation) rights of BNSF over the property in question.³ BNSF has authorized Montoff to represent that BNSF does not wish to retain any residual common carrier obligations (right to reactivate) on any of the trackage at issue here. Moreover, BNSF believes that Montoff should acquire the right to reactivate consistent with implementation of its business plan for restoration of rail use of the property. BNSF has advised ODOT and Montoff that it will consent to the substitution of Montoff as interim trail manager in AB 6 (Sub-no. 379X) provided this Board also authorizes Montoff to acquire BNSF's residual common carrier obligation (reactivation rights) pursuant to this Notice.

In short, Montoff's efforts to rehabilitate the line so as to restore service require acquisition of the right to reactivate. In order to acquire the property and to initiate rehabilitation activities, Montoff must secure, at this time, the rights required for reinstitution of service. BNSF and ODOT support Montoff's efforts, and BNSF authorizes Montoff affirmatively to represent that it does not wish to retain any

³ In the King County case, supra, this Board ruled that transfer of the right to reactivate to the interim trail user is not inconsistent with the Trails Act. Slip op. at 3. Moreover, the Board ruled that reactivation does not have to be imminent for the transfer to take place. Id. at 4. The Board found that detailed scrutiny of the transaction was not necessary to carry out rail policy, and instead expeditious treatment by exemption was appropriate. Noting that the line in question in King County had already been "conditionally authorized for abandonment," the Board indicated that there was no market power issue. Id. In the case of the Guthrie-Fairmont line, the property was authorized for full abandonment (but was railbanked) over a decade ago. In short, all the indications favor an exempt transfer of the right to reactivate in this proceeding.

such rights. Montoff is authorized to state that both ODOT and BNSF support this notice of exemption for transfer of the reactivation rights, and join with Montoff in requesting that the notice be granted. All parties wish to cooperate to allow a closing between ODOT and Montoff on March 25, inter alia, so Montoff may assume responsibility for the bridges before further potential deterioration of remaining bridges due to spring flood events.

Information Required by 49 C.F.R. 1150.33

Name and address of applicant [1150.33(a)]: Montoff Transportation Company, LLC, Att: Managing Member, 426 NW 162d St., Seattle, WA 98177.

Applicant's representative [1150.33(b)]: Charles H. Montange, 426 NW 162d St., Seattle, WA 98177 (206) 546-1936.

Statement of agreement [1150.33(c)]. Montoff has executed an agreement with BNSF Railway Company ("BNSF") for Montoff to acquire BNSF's reactivation rights for the line described above at the same time that Montoff acquires the rights of Oklahoma Department of Transportation ("ODOT") as the current interim trail manager of the line.

Operator of the property [1150.33(d)]. Montoff will operate the property initially as interim trail manager, pending necessary rehabilitation. Montoff understands that it may not operate any portion of the property as a common carrier until it requests dismissal of the abandonment proceeding pursuant to an

exercise of the right of reactivation it is acquiring in this proceeding, or pursuant to an exemption (presumably to provide contract carrier services).

Brief summary of transaction [1150.33(g)]. ODOT and BNSF originally entered into a railbanking agreement pursuant to a NITU issued in AB 6 (Sub-no. 379X). BNSF transferred the line at issue here to ODOT pursuant to a railbanking agreement and deed. Trackage remains in place but substantial rehabilitation is required, especially in connection with bridges and wash-outs, as well as restoration of switches before rail service of any sort may be undertaken. Montoff has contracted to acquire all the interests of ODOT, and to become substitute interim trail manager subject to this Board's entering an appropriate order pursuant to 49 C.F.R. 1152.29(f). BNSF is prepared to consent to such a substitution upon Montoff's acquisition of BNSF's reactivation rights. Such acquisition is consistent with, and in furtherance of, Montoff's business plan. Thus, ODOT is transferring the underlying real estate and trackage pursuant to the order requested in AB 6 (Sub-no. 379X).

Since Montoff is acquiring the trackage for provision of rail service, BNSF is transferring the right to reactivate pursuant to the Notice filed herein. This will facilitate Montoff's ability to obtain financing for rehabilitation activities, as well as to enter into long-term arrangements for rail use of the line.

Name and address of RR transferring property:

BNSF's address is: BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 78131. BNSF will be transferring its residual common carrier obligation (right to reactivate).

ODOT's address is: Oklahoma Department of Transportation, 200 Northeast 21st St., Oklahoma City, OK 73105. ODOT is not a rail carrier but acquired the rail property from BNSF pursuant to 16 U.S.C. 1247(d). Montoff will be acquiring ODOT's interest when this Board authorizes Montoff to become substitute trail manager in AB 6 (Sub-no. 379X).

Proposed time schedule:

Montoff proposes to consummate acquisition of the property from ODOT and the reactivation rights from BNSF on the first work day after this notice of exemption becomes effective (i.e., 30 days from filing). Assuming a filing date of February 17, the closing would be on or after March 18. The parties in general seek orders permitting a closing between ODOT and Montoff no later than March 25, 2010.

Mileposts of subject property:

MP 74.60 (near Fairmont) to MP 116.40 (at Guthrie) in Logan and Guthrie Counties, OK.

Total route miles: Approx. 41.8 miles.

Related transactions: Montoff is seeking issuance of a substitute NITU with Montoff as substitute interim trail manager in AB 6 (Sub-no. 379X), and will acquire ODOT's interests pursuant to that substitute NITU.

Map [1150.33(f)]: A map showing the line is attached as

Exhibit A.

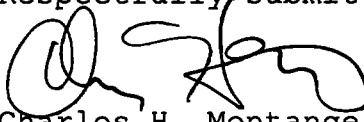
Certificate of carrier classification [1150.33(g)]: Montoff certifies that its projected annual revenues will be less than \$5,000,000 annually, not exceeding those for a Class III carrier. A certificate complying with the provisions of 49 C.F.R. 1150.33(g) is attached as Exhibit B.

Limits on interchange commitments [1150.33(h)]: Not applicable. Among other things, there is no agreement imposing limits.

Caption summary (1150.34): A caption summary in the prescribed form is attached as Exhibit C.

Environmental/historic preservation (Part 1105): Pursuant to 49 C.F.R. 1105.6(c)(2), no environmental documentation is required because acquisition of reactivation rights as provided herein will not result in changes to carrier operations, especially in terms of exceeding thresholds and because the acquisition does not come within 1105(b)(4). In addition, a transfer of reactivation rights is exempt from historic review under 1105.8, because this is not a transaction that falls under 1105.6(a) or (b), and because it is not a lease, transfer or sale of a railroad's line, site or structures. No change will flow from the transfer of reactivation rights, and in all events, environmental and historic preservation documentation has been fully supplied in AB 6 (Sub-no. 379X). Montoff will comply with all conditions imposed in that proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Charles H. Montange', written over the printed name.

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-2936
fax: -3739
for Montoff Transportation
Company, LLC

Attachments:

- A - Map
- B - Certification
- C - Caption Summary

Exhibit A

Guthrie to Fairmont

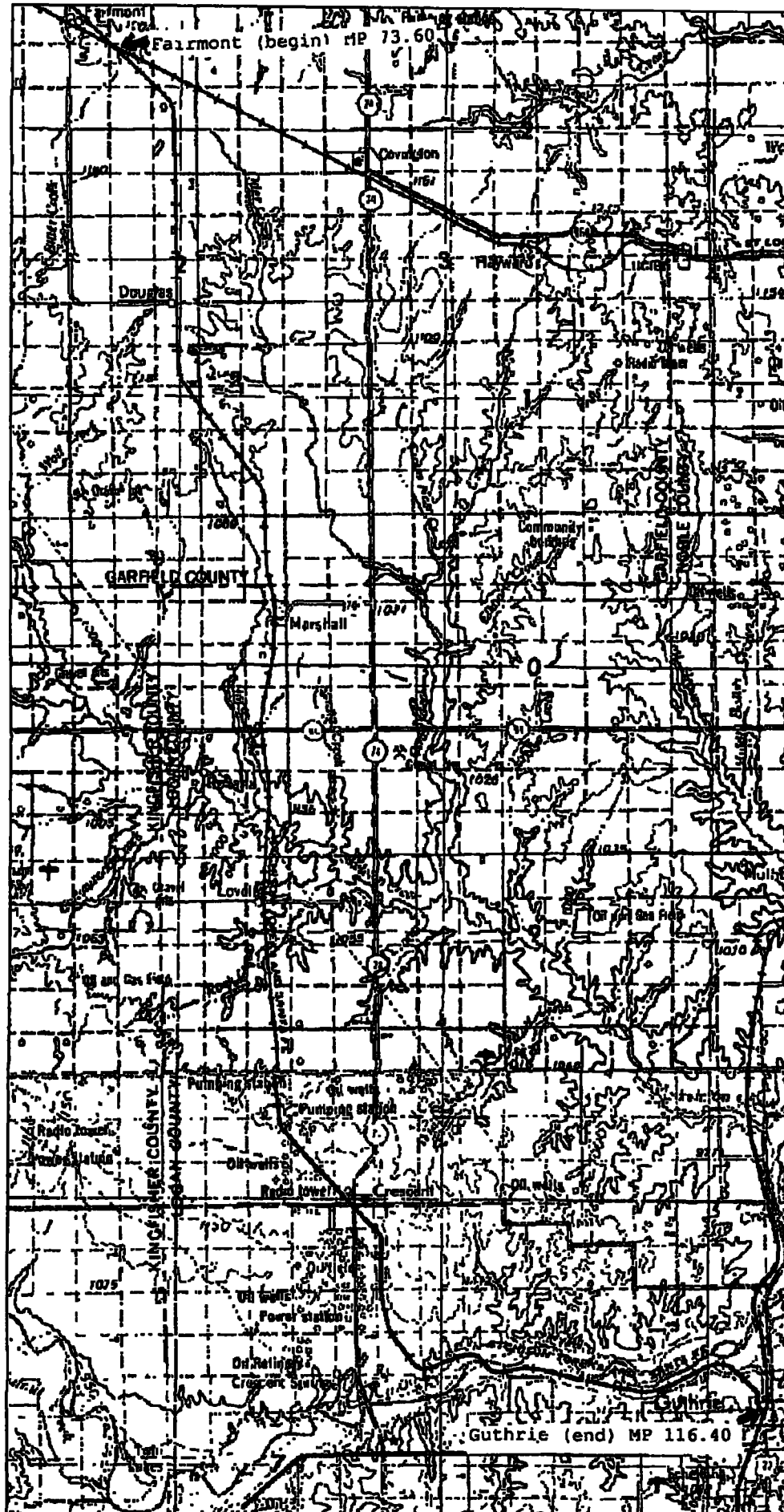


Exhibit B

I, Charles H. Montange, certify that I am Managing Member of Montoff Transportation Company LLC and that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

I further certify that I have read the entire Notice and the facts stated therein are true and correct to the best of my knowledge, information, and belief.

Per 49 C.F.R. 1104.5, I further certify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Certification for a Notice of Exemption under 49 C.F.R. 1150.31.

Executed on: 16 Feb 2010.


Charles H. Montange

Exhibit C

Before the Surface Transportation Board

STB Finance Docket No. 35354

Montoff Transportation Company, LLC
- Acquisition Exemption -
BNSF Railway Company

Montoff Transportation Company LLC has filed a notice of exemption to acquire BNSF Railway Company's reactivation rights for a line of railroad described as MP 74.60 (near Fairmont) to MP 116.40 (at Guthrie) in Garfield and Logan Counties, Oklahoma. Comments must be filed with the Board and served on Montoff's representative, Charles H. Montange, 426 NW 162d St., Seattle, WA 98177.

The notice is filed under 49 C.F.R. 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Certificate of Service

By my signature below, I certify service of the foregoing by email transmission on February 16, 2010, and by deposit in the U.S. Mail, postage pre-paid first class, on the same day, for delivery to the following counsel: Karl Morell, Esq., Ball Janik, 1455 F St. NW, Suite 225, Washington, D.C. 20005 (for BNSF); Eric Hocky, Esq., Thorp Reed, One Commerce Square, 2005 Market St., Suite 1000, Philadelphia, PA 19103 (for ODOT).

A handwritten signature in black ink, appearing to be "C. J. Morell", is written over a horizontal line.